IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

CRL.A.No. 469 of 1998()

AGAINST THE JUDGMENT ORDER DT.16.3.98 IN ST.219/1993 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM.

.....

APPELLANT: COMPLAINANT

V.NARAYANAN NAIR, T.C. 3/883,
PANAYIL VEEDU, LEKSHMI NAGAR,
LIC LANE, PATTOM.

BY ADV. SRI.M.BALAGOVINDAN
SRI.BIJU KURIAKOSE

RESPONDENTS: ACCUSED & STATE

----

1. **KRISHNANKUTTY, S/O.KUTTAN,**
   KULAVARAMPIL VEEDU,
   T.K.DIVAKARAN ROAD, MARAPPALAM, PATTOM.

2. **STATE OF KERALA, REP.BY THE DIRECTOR**
   GENERAL OF PROSECUTION , ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.C.SANTHOSHKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 07 / 02 /2007 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Crl.Appeal No.469 OF 1998

Dated 7th February, 2007

JUDGMENT

This appeal is filed from the order of acquittal of the accused. Appeal was admitted and notice was issued on 16.7.1998. Process was not filed and steps were not taken and the appeal was put in the defect list. Since process was not filed despite posting in the defect list, it was posted in the court on 29.3.2006. Appellant requested for a week's time to cure the defects for taking steps, but, no steps were taken. On 11.10.2006 again the case was posted, but, defects were not cured and the following endorsement was made:

> "Defects not cured so far. One week's time allowed to cure the defect.

Despite that, no process was served so far and defects were not cured. Without serving notice to the accused, no order in favour of the appellant can be made in an appeal filed against an order of acquittal. Apart from the same, we have gone through the appeal on merit.

2. The case of the appellant was that the complainant borrowed Rs.1,40,000/= from the appellant. Two cheques were issued and the cheques were dishonoured for

insufficiency of funds. Therefore, after complying with the statutory formalities, complaint was filed under Section 138 of the Negotiable Instruments Act. The case of the accused was that his cheque book was lost from his possession and new cheque book was issued on 20.5.1985. Ext.P2 cheque was issued from the old cheque book which was stated to have been lost as proved by DW1. The evidence adduced would show that the cheque which was issued from the old cheque book, issued before 1985 and with regard to Ext.P1 cheque dated 23.11.1992, the court found that it was not executed by the accused and Exts.P9 and P10 would show that the account in the name of the accused is inoperative from 1985. It was further found that signature in Exst.P1 and P2 cheques are different from the admitted signature of the accused and the execution of the cheque itself was not proved. In the above circumstances, from the evidence available the court below found that the complainant failed to prove the case. I agree with the same. There is no merit in the appeal.

The appeal is dismissed.

J.B.KOSHY
Judge

tks